

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RICHARD EARL PALLASKE,

Plaintiff,

v.

ISLAND COUNTY, *et al.*,

Defendants.

No. C06-1735RSL

ORDER DENYING DEFENDANTS'
RULE 72(a) OBJECTIONS TO
JUDGE DONOHUE'S
NOVEMBER 15, 2007 ORDER
DENYING DEFENDANT'S MOTION
FOR RECONSIDERATION

I. INTRODUCTION

This matter comes before the Court on "Defendants' Rule 72(a) Objections to Magistrate Judge Donohue's November 15, 2007 Order Denying Defendants' Motion for Reconsideration" (Dkt. #54). Defendants object to the "Order Denying Defendants' Motion for Reconsideration" (Dkt. #52) entered by the Honorable James P. Donohue, United States Magistrate Judge, because they contend that Judge Donohue's order compelling defendant Island County to produce documents responsive to plaintiff's request for production of documents was erroneous. As a result, defendants request that this Court find that an in camera review of the documents is required or find that plaintiff is not entitled to production of the documents under the work product doctrine. For the reasons set forth below, the Court denies defendants' objections.

II. DISCUSSION

Defendants filed their objections under Fed. R. Civ. P. 72(a), which states:

ORDER DENYING DEFENDANTS'
RULE 72(a) OBJECTIONS

When a pretrial matter not dispositive of a party's claim or defense is referred to a magistrate judge to hear and decide, the magistrate judge must promptly conduct the required proceedings and, when appropriate, issue a written order stating the decision. A party may serve and file objections to the order within 10 days after being served with a copy. A party may not assign as error a defect in the order not timely objected to. The district judge in the case must consider timely objections and modify or set aside any part of the order that is contrary to law.

Id. (emphasis added). In the "Order Denying Defendants' Motion for Reconsideration" (Dkt. #52), Judge Donohue concluded that defendants failed to show under Local Civil Rule 7(h) that the order requiring that "defendants produce the documents and or information referred to by questions 7-9 in plaintiff's 'Request for Information and Documents'" (Dkt. #47) was the product of manifest error or that defendants had presented new facts or legal authority which could not have been brought to the Court's attention earlier with reasonable diligence. See Local Civil Rule 7(h)(1). The documents at issue were identified in plaintiff's request for production 7-9 as:

7. Copy of investigation report submitted to the County Risk Manager, Betty Kemp, by county employees pursuant to Island County Code 2.32.040.
8. Copy of report submitted by the County Risk Manager, Betty Kemp, to the Board of County Commissioners pursuant to Island County Code 2.32.050 B.
9. Copy of minutes of meeting from any discussions held by County Risk Manager, Betty Kemp, with Board of County Commissioners in regards to submitted reports or findings in connection with plaintiff's complaint.

See Dkt. #55 (Novasky Decl.) at Ex. A (Plaintiff's Request for Information and Documents); Dkt. #52 ("[I]t is plain that plaintiff's motion [to compel] sought production of these documents").

In their response to plaintiff's requests for production 7-9, defendants simply stated:

7. **OBJECTION**; attorney/client privilege; work product.
8. **OBJECTION**; attorney/client privilege; work product.
9. **OBJECTION**; attorney/client privilege; work product.

See id. at Ex. B (Defendants' Response to Plaintiff's Request for Information and Documents).

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2 In Burlington N. & Santa Fe R.R. Co., v. United States Dist. Court for the Dist. of
3 Montana, 408 F.3d 1142 (9th Cir. 2005), the Ninth Circuit held that while a privilege log was
4 not per se required, boilerplate objections were insufficient to assert privilege or material subject
5 to protection as trial preparation material, holding:

6 We hold that boilerplate objections or blanket refusals inserted into a response to a
7 Rule 34 request for production of documents are insufficient to assert a privilege.
8 However, we also reject a per se waiver rule that deems a privilege waived if a
9 privilege log is not produced within Rule 34's 30-day time limit. Instead, using the
10 30-day period as a default guideline, a district court should make a case-by-case
11 determination, taking into account the following factors: [1] the degree to which
12 the objection or assertion of privilege enables the litigant seeking discovery and
13 the court to evaluate whether each of the withheld documents is privileged (where
14 providing particulars typically contained in a privilege log is presumptively
15 sufficient and boilerplate objections are presumptively insufficient); [2] the
16 timeliness of the objection and accompanying information about the withheld
17 documents (where service within 30 days, as a default guideline is sufficient); [3]
18 the magnitude of the document production; and [4] other particular circumstances
19 of the litigation that make responding to discovery unusually easy . . . or unusually
20 hard.

21 Id. at 1149 (emphasis added). Under the factors from Burlington N. & Santa Fe R.R. Co. set
22 forth above, the Court finds and concludes that Judge Donohue's "Order Denying Defendants'
23 Motion for Reconsideration" (Dkt. #52) under Fed. R. Civ. P. 72(a) is not contrary to law.

24 First, in response to plaintiff's request for production, defendants had the burden to
25 provide more than the boilerplate objection that they asserted, "**OBJECTION**; attorney/client
26 privilege; work product" in order for the "court to evaluate whether each of the withheld
documents is privileged." Burlington N. & Santa Fe R.R. Co., 408 F.3d at 1149. Second, in
their response to plaintiff's request for production, defendants failed to provide any information
about the withheld documents. Asserting that "Island County did not submit a privilege log
because the documents withheld from production were self-evident based on the nature of Mr.
Pallaske's requests," does not satisfy defendants' obligations under Fed. R. Civ. P. 26(b)(5) and
34. See Dkt. #54 at 7. Although the identity of the document may have been self-evident, the
reason the documents were covered by the attorney-client privilege or work product doctrine

1 was not self-evident to the Court based on defendants' boilerplate objection and did not provide
2 any information to allow the court to evaluate the merit of defendants' objection. Third, the
3 magnitude of the document production in this case appears to have been minimal. In response to
4 plaintiff's request for production, defendants produced only 42 pages. See Dkt. #55 at Ex. B.
5 Finally, defendants did not show that the circumstances of the litigation made responding to
6 discovery unusually hard. Notably, defendants failed to respond to plaintiff's motion to compel
7 (Dkt. #33). See Dkt. #34 (Order Granting Plaintiff's Motion to Compel and Order Directing
8 Defendants to Show Cause); Dkt. #54 ("Island County did not formally respond [to the motion
9 to compel]").

10 III. CONCLUSION

11 For all of the foregoing reasons, "Defendants' Rule 72(a) Objections to Magistrate Judge
12 Donohue's November 15, 2007 Order Denying Defendants' Motion for Reconsideration" (Dkt.
13 #54) is DENIED.

14 DATED this 10th day of December, 2007.

16 

17 Robert S. Lasnik
18 United States District Judge